

Drafting Information

The principal author of these regulations is Vernon S. Carter of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Parts 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 1 is amended to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.411(d)–4, Q&A–2(e) also issued under 26 U.S.C. 411(d)(6)(E).
* * *

Par. 2. Section 1.411(d)–4, Q&A–2(e) is revised to read as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

A–2: * * *

(e) *Permitted plan amendments affecting alternative forms of payment under defined contribution plans—(1) General rule.* A defined contribution plan does not violate the requirements of section 411(d)(6) merely because the plan is amended to eliminate or restrict the ability of a participant to receive payment of accrued benefits under a particular optional form of benefit if, after the plan amendment is effective with respect to the participant, the alternative forms of payment available to the participant include payment in a single-sum distribution form that is otherwise identical to the optional form of benefit that is being eliminated or restricted.

(2) *Otherwise identical single-sum distribution.* For purposes of this paragraph (e), a single-sum distribution form is otherwise identical to an optional form of benefit that is eliminated or restricted pursuant to paragraph (e)(1) of this Q&A–2 only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement. For example, a single-sum distribution form is not otherwise identical to a specified installment form of benefit if the single-sum distribution form is not available for distribution on the date on which the installment form

would have been available for commencement, is not available in the same medium of distribution as the installment form, or imposes any condition of eligibility that did not apply to the installment form. However, an otherwise identical distribution form need not retain rights or features of the optional form of benefit that is eliminated or restricted to the extent that those rights or features would not be protected from elimination or restriction under section 411(d)(6) or this section.

(3) *Example.* The following example illustrates the application of this paragraph (e):

Example. (i) P is a participant in Plan M, a qualified profit-sharing plan with a calendar plan year that is invested in mutual funds. The distribution forms available to P under Plan M include a distribution of P's vested account balance under Plan M in the form of distribution of various annuity contract forms (including a single life annuity and a joint and survivor annuity). The annuity payments under the annuity contract forms begin as of the first day of the month following P's severance from employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). P has not previously elected payment of benefits in the form of a life annuity, and Plan M is not a direct or indirect transferee of any plan that is a defined benefit plan or a defined contribution plan that is subject to section 412. Distributions on the death of a participant are made in accordance with plan provisions that comply with section 401(a)(11)(B)(iii)(I). On May 2, 2004, Plan M is amended so that, after the amendment is effective, P is no longer entitled to any distribution in the form of the distribution of an annuity contract. However, after the amendment is effective, P is entitled to receive a single-sum cash distribution of P's vested account balance under Plan M payable as of the first day of the month following P's severance from employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). The amendment does not apply to P if P elects to have annuity payments begin before July 1, 2004.

(ii) Plan M does not violate the requirements of section 411(d)(6) (or section 401(a)(11)) merely because, as of July 1, 2004, the plan amendment has eliminated P's option to receive a distribution in any of the various annuity contract forms previously available.

(4) *Effective date.* This paragraph (e) is applicable on the date of publication of final regulations in the **Federal Register**.

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Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209377–89]

RIN 1545–BA69

At-Risk Limitations; Interest Other Than That of a Creditor

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment, for purposes of the at-risk limitations, of amounts borrowed from a person who has an interest in an activity other than that of a creditor or from a person related to a person (other than the borrower) with such an interest. Proposed regulations published in 1979 provide that amounts borrowed from a person who has an interest in an activity other than that of a creditor do not increase the amount at risk in certain enumerated activities. These proposed regulations extend this rule to all activities subject to the at-risk limitations. In addition, the rule is conformed to the current statutory language providing for its application to amounts borrowed from persons related to a person (other than the borrower) with an interest other than that of a creditor. These proposed regulations affect taxpayers subject to the at-risk limitations and provide them with guidance necessary to comply with the law.

DATES: Written or electronic comments and requests for a public hearing must be received no later than October 6, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–209377–89), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–209377–89), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at: <http://www.irs.gov/regs>.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Tara P. Volungis or Christopher L. Trump, 202–622–3080; concerning submissions and requests for a public hearing, [INSERT NAME], 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background**

This document proposes amendments to 26 CFR part 1 to provide additional rules under section 465 of the Internal Revenue Code of 1986 (Code), as amended. Section 465 was added to the Code by section 204 of the Tax Reform Act of 1976 (Public Law 94-455, 90 Stat. 1531). Section 465 limits the deductibility of losses to a taxpayer's economic investment (the amount at risk) in the activity at the close of a taxable year. A taxpayer is generally considered at risk in an activity to the extent of cash and the adjusted basis of property contributed by the taxpayer to the activity. In general, a taxpayer's amount at risk also includes any amounts borrowed for use in the activity if the taxpayer is personally liable for repayment or if property other than property used in the activity is pledged as security.

As originally enacted, section 465 applied to certain enumerated activities described in section 465(c)(1) (old activities). Subsequent amendments made by section 201 of the Revenue Act of 1978 (Public Law 95-600, 92 Stat. 2814) extended the at-risk rules to other activities described in section 465(c)(3)(A) (new activities).

On June 5, 1979, the IRS published in the **Federal Register** (44 FR 32235) proposed regulations (LR-166-76) relating to the treatment of investments in old activities under section 465 of the Code (the previously proposed regulations). Section 1.465-8 of the previously proposed regulations provides that amounts borrowed by a taxpayer for use in an old activity do not increase the taxpayer's amount at risk if the lender has an interest in the activity other than that of a creditor. Section 1.465-20 of the previously proposed regulations provides rules for the treatment of amounts borrowed from certain persons and amounts protected against loss. This document proposes to amend §§ 1.465-8 and 1.465-20 of the previously proposed regulations.

Explanation of Provisions*I. Application of Section 465(b)(3) to New Activities*

Under section 465(b)(3), amounts borrowed for use in an activity will not increase the borrower's amount at risk in the activity if the lender has an interest other than that of a creditor in the activity (a disqualifying interest) or if the lender is related to a person (other than the borrower) who has a disqualifying interest in the activity. The rule applies even if the borrower is

personally liable for the repayment of the loan or the loan is secured by property not used in the activity.

Section 465(c)(3)(D) provides that section 465(b)(3) will apply to new activities only to the extent provided in regulations prescribed by the Secretary. The Tax Court in *Alexander v. Commissioner*, 95 T.C. 467 (1990), held that, until regulations are issued, section 465(b)(3) cannot be applied to a new activity. These proposed regulations will apply section 465(b)(3) to the new activities described in section 465(c)(3)(A).

II. Related Persons

As originally enacted, section 465(b)(3) also applied to any borrowing from persons related to the taxpayer under section 267(b). Section 432(c) of the Deficit Reduction Act of 1984 (Public Law 98-369, 98 Stat. 814) eliminated this rule but provided, instead, that a taxpayer's amount at risk is not increased by amounts borrowed from a person related to a person (other than the taxpayer) who has a disqualifying interest in the activity. These proposed regulations change § 1.465-20 of the previously proposed regulations to reflect the amendment made by the Deficit Reduction Act of 1984.

III. Scope of § 1.465-8

These proposed regulations modify the previously proposed regulations to reflect section 465(b)(3)(B)(ii), which provides that, for purposes of determining a corporation's amount at risk, an interest as a shareholder is not a disqualifying interest. Thus, amounts borrowed by a corporation from its shareholders may increase the corporation's amount at risk.

These proposed regulations also modify the previously proposed regulations to reflect section 465(b)(6)(A), which provides that "qualified nonrecourse financing," if borrowed for use in an activity of holding real property and secured by real property used in the activity, is not subject to the limitations of section 465(b)(3). In addition, these proposed regulations expand the exception to include financing that, if it were nonrecourse, would be financing described in section 465(b)(6)(B). This expansion of the exception ensures that recourse financing is treated no worse than qualified nonrecourse financing.

Proposed Effective Date

The new rules in these regulations are proposed to be applicable to amounts borrowed after the rules are published

as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Tara P. Volungis and Christopher L. Trump of the Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1, which was proposed at 44 FR 32235 (June 5, 1979), is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.465–8 also issued under 26 U.S.C. 465. * * *

Section 1.465–20 also issued under 26 U.S.C. 465. * * *

Par. 2. Section 1.465–8, as proposed at 44 FR 32238 (June 5, 1979), is amended as follows:

1. Paragraphs (a) and (b)(1) are revised.

2. The last sentence of paragraph (c)(1) is revised.

3. The second sentence of paragraph (d)(1) is revised.

4. Paragraph (e) is added.

The revisions and additions read as follows:

§ 1.465–8 General rules; interest other than that of a creditor.

(a) *In general*—(1) *Amounts borrowed.* This section applies to amounts borrowed for use in an activity described in section 465(c)(1) or (c)(3)(A). Amounts borrowed with respect to an activity will not increase the borrower's amount at risk in the activity if the lender has an interest in the activity other than that of a creditor or is related to a person (other than the borrower) who has an interest in the activity other than that of a creditor. This rule applies even if the borrower is personally liable for the repayment of the loan or the loan is secured by property not used in the activity. For additional rules relating to the treatment of amounts borrowed from these persons, see § 1.465–20.

(2) *Certain borrowed amounts excepted.* (i) For purposes of determining a corporation's amount at risk, an interest in the corporation as a shareholder is not an interest in any activity of the corporation. Thus, amounts borrowed by a corporation from a shareholder may increase the corporation's amount at risk.

(ii) For purposes of determining a taxpayer's amount at risk in an activity of holding real property, paragraph (a)(1) of this section does not apply to financing that is secured by real property used in the activity and is either—

(A) Qualified nonrecourse financing described in section 465(b)(6)(B); or

(B) Financing that, if it were nonrecourse, would be financing described in section 465(b)(6)(B).

(b) *Loans for which the borrower is personally liable for repayment*—(1) *General rule.* If a borrower is personally

liable for the repayment of a loan for use in an activity, a person shall be considered a person with an interest in the activity other than that of a creditor only if the person has either a capital interest in the activity or an interest in the net profits of the activity.

* * * * *

(c) * * *

(1) * * * In the case of such a loan a person shall be considered a person with an interest in the activity other than that of a creditor only if the person has either a capital interest in the activity or an interest in the net profits of the activity.

* * * * *

(d) * * *

(1) * * * In the case of such a loan a person shall be considered a person with an interest in the activity other than that of a creditor if the person stands to receive financial gain (other than interest) from the activity or from the sale of interests in the activity.

* * * * *

(e) *Effective date.* This section applies to amounts borrowed after the date this section is published as a final regulation in the **Federal Register**.

Par. 3. Section 1.465–20, as proposed at 44 FR 32241 (June 5, 1979), is amended as follows:

1. Paragraphs (a) and (b) are revised.

2. Paragraph (d) is added.

The revisions and additions read as follows:

§ 1.465–20 Treatment of amounts borrowed from certain persons and amounts protected against loss.

(a) *General rule.* The following amounts are treated in the same manner as borrowed amounts for which the taxpayer has no personal liability and for which no security is pledged—

(1) Amounts that do not increase the taxpayer's amount at risk because they are borrowed from a person who has an interest in the activity other than that of a creditor or from a person who is related to a person (other than the taxpayer) who has an interest in the activity other than that of a creditor; and

(2) Amounts (whether or not borrowed) that are protected against loss.

(b) *Interest other than that of a creditor; cross reference.* See § 1.465–8 for additional rules relating to amounts borrowed from a person who has an interest in the activity other than that of a creditor or is related to a person (other than the taxpayer) who has an interest in the activity other than that of a creditor.

* * * * *

(d) *Effective date.* This section applies to amounts borrowed after the date this section is published as a final regulation in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 254

RIN 1010–AC57

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Incident Reporting Requirements

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule revises and clarifies MMS requirements for reporting incidents associated with Outer Continental Shelf (OCS) oil and gas and other mineral operations. It adds a requirement for written reports and proposes the use of two new MMS report forms. The written reports must be submitted electronically. MMS has developed these reporting requirements in conjunction with the U.S. Coast Guard (USCG) and intends them to be as consistent as possible with USCG requirements for incidents where the two agencies have mutual interest and responsibilities. MMS is also working with the USCG to develop a single point electronic reporting system that would allow incident reports submitted through this single point to be sent to both agencies. This will help minimize duplicative reporting required by the two agencies.

DATES: We will consider all comments we receive by October 6, 2003. We will begin reviewing comments then and may not fully consider comments we receive after October 6, 2003.

ADDRESSES: If you wish to comment, mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team (Comments). If you wish to respond by e-mail, the e-mail address is:

rules.comments@MMS.gov. Use the term “Incident Reporting” in your e-mail subject line. Include your name and address in your e-mail message and mark your message for return receipt.